

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 2484cv1833

Parent Doe, as Parent and Next Friend of
Student Doe, a Minor Child,

Plaintiff,

v.

City of Chelsea and Almudena Abeyta,
Superintendent of Chelsea Public Schools, in
Her Official Capacity

Defendants.

**VERIFIED AMENDED COMPLAINT
AND JURY DEMAND**

Introduction

1. On March 24, 2022, Chelsea Public Schools indefinitely suspended Student Doe, a then-fifteen-year-old immigrant student, under a statute that allows principals to suspend a student upon the issuance of a felony complaint against them.
2. No felony delinquency complaint had issued against Doe.
3. Chelsea did not provide Doe with adequate notice of the claims against them – either in English or Spanish, the language of the home – nor did it find that a felony complaint had issued against Student Doe.
4. Chelsea suspended Student Doe for the rest of the school year, warning that Doe may not be allowed to return in the next.
5. Plaintiff Parent Doe, Student’s parent and next friend, seeks compensation for Student Doe’s illegal exclusion, declaratory relief, and attorney’s fees and costs.

Parties

6. Plaintiff and Student Doe reside together in Chelsea, Massachusetts. Plaintiff is Student's legal custodian.
7. Defendant Chelsea, a municipality incorporated in Massachusetts, operates the Chelsea Public Schools under the laws of the Commonwealth, and is the public employer liable in tort for the acts and omissions of its employees under G.L. c. 76, § 16 and G.L. c. 258, § 1.
8. Defendant Almudena Abeyta was at all relevant times the Superintendent of Chelsea Public Schools and was tasked to manage the district in a manner consistent with the laws of the Commonwealth under G.L. c. 71, § 52. She is sued in her official capacity.

Venue

9. Venue is appropriate as Plaintiffs reside, Defendants are located, and the violations alleged all occurred, within Suffolk County.

Jurisdiction

10. This Court has jurisdiction over this matter under G.L. c. 76, § 16, G.L. c. 258, § 3, G.L. c. 231A, § 1, and G.L. c. 93, § 102.

Statement of Facts

11. Parent Doe enrolled Student Doe in Chelsea Public Schools after the two sought asylum from Honduras and immigrated to Massachusetts in 2016. Student Doe was 10 years old at the time.
12. Student and Parent Doe speak Spanish at home and are of limited English proficiency.

13. From Student Doe's enrollment until the 2021-2022 school year, Chelsea Public Schools suspended Student Doe only once.
14. On March 24, 2022, Michael Lovato, then principal of Chelsea High School and acting under the authority and supervision of or at the direction of Superintendent Abeyta, suspended Student Doe for the remainder of the school year and warned Student Doe that they might not allow Doe to return the following school year.
15. On March 23, 2022, Emma Gardiner, then assistant principal of Chelsea High School and acting under the authority and supervision of or at the direction of Superintendent Abeyta, sent Parent Doe two notices that it was conducting a disciplinary hearing on March 24, 2022. One notice was in English and the other was in Spanish, the latter of which Principal Lovato signed as well. They contained inconsistent information.
16. The English version of Student Doe's "Notice of Disciplinary Hearing" listed the reason for the "possible expulsion or suspension" as: "[Student Doe] continues to skip classes, is late when [Doe] is in the bathroom, and often the bathrooms have had evidence of vape smoke. Specifically [sic] on 3/21/22."
17. The Spanish version of the notice stated that there were "cargos por delitos graves" (felony charges) based on "notificación de la policía" (notification from the police).
18. Both notices stated that Doe was to be disciplined under G.L. c. 71, § 37H1/2, a statute that allows a principal to indefinitely suspend a student only upon the issuance of a felony complaint against them.
19. No such felony complaint had issued against Student Doe.
20. There was no such report from the police.

21. On March 24, 2022, Chelsea purported to hold a long-term suspension hearing. Principal Lovato and Assistant Principal Gardiner attended, together with Assistant Principal Monica Caporale and Karissa Barbosa, an outreach worker for the high school. No one presented any evidence that a felony charge had issued against Student Doe.
22. At the hearing, Chelsea employees told Student Doe and Parent Doe that they were excluding Student Doe from school for the remainder of the school year and might not allow Student Doe to return the following year.
23. That same day, Principal Lovato issued written notice of Student Doe's suspension for the remainder of the school year under G.L. c. 71, § 37H1/2 ("the suspension notice").
24. In the suspension notice, Principal Lovato listed the following offenses as the bases for the suspension, none of which describe any specific instances of misbehavior, felonious or otherwise: "delincuente escolar habitual" (habitual student delinquency), "comportamiento [sic] inapropiado" (inappropriate conduct), "rompiendo repetidamente las reglas de la escuela" (repeatedly breaking school rules), "crear una perturbación en el montaje" (disturbing school assembly), "salir de la escuela sin permiso" (leaving school without permission), and "tardanzas exesivas" (excessive tardiness).
25. In the same document, Principal Lovato found that Student Doe's presence "would have a substantial detrimental effect on the general welfare of the school." This is a required finding only when a student is being excluded due to a felony charge or complaint under § 37H1/2. Chelsea, however, articulated no basis for such a finding, filling the blank space in its form designated for an explanation for how the statutory requirement is satisfied with merely definitions of long-term suspension and expulsion.

26. Neither Principal Lovato nor any other Chelsea employee stated any basis for believing that a felony complaint had issued against Student Doe.
27. By suspending Student Doe for at least the remainder of the 2021-22 school year based on a felony charge that did not exist, without proper notice, and warning of its likely refusal to allow Doe to return, Chelsea, through its employees, made clear to Student Doe that Doe was not welcome in the school and encouraged Doe to drop out of school. This caused Student Doe pain and suffering and greatly diminished their future earning potential.
28. On December 15, 2023, Parent Doe sent to Chelsea's City Manager Ned Keefe a presentment in accordance with G.L. c. 258, § 4 detailing the time, place, and notice of these claims.

Claims

Based on the foregoing allegations, Plaintiffs assert the following violations of law:

Count I: Unlawful School Exclusion

29. By indefinitely suspending Student Doe under § 37H1/2 when no felony complaint had issued against them, Defendants unlawfully excluded Doe in violation of G.L. c. 76, § 16.

Count II: Denial of Equal Rights Under Law

30. By failing to provide Student Doe and Parent Doe proper notice in Spanish, Defendants violated G.L. c. 93, § 102.

Wherefore, Plaintiff prays that this Honorable Court:

- A. Declare that Defendants unlawfully excluded Student Doe by indefinitely suspending them under G.L. c. 71, § 37H1/2 absent the issuance of a felony complaint against Student Doe, and with conflicting hearing notices in English and Spanish, the language of the home;
- B. Declare that the Defendants discriminated against Student Doe on the basis of national origin under G.L. c. 93, § 102 by providing conflicting hearing notices in English and Spanish, the language of the home;
- C. Order Defendants to expunge the March 24th, 2022, suspension and related absences from Student Doe's record and transcript;
- D. Order, under G.L. c. 76, §16 and c. 258 § 1, that the City of Chelsea pay compensatory damages to Plaintiffs for Student Doe's unlawful exclusion;
- E. Order Defendants, jointly and severally, to pay compensatory and exemplary damages to Plaintiffs for violation of Student's rights under G.L. c. 93, § 102 and the laws and Constitution of Massachusetts;
- F. Order the Defendants, jointly and severally, to pay Plaintiffs' costs and reasonable attorneys' fees; and;
- G. Enter such further order as in its judgment is equitable and just.

PLAINTIFF REQUESTS A TRIAL BY JURY.

Dated: August 2, 2024

Respectfully submitted,

Parent Doe, on behalf of Student Doe

By their attorneys,

Matthew Gregor (JW)

Matthew Gregor (Mass. Bar No. 673785)

Robert LeRoux Hernandez (Mass. Bar No. 231920)
**MENTAL HEALTH LEGAL ADVISORS
COMMITTEE**

100 Hancock Street, Suite 1002
Quincy, MA 02171
Tel.: 617-338-2345
Fax: 617-338-2347
mcregor@mhlac.org
rhernandez@mhlac.org


Elizabeth Levitan (JW)

Elizabeth Levitan (Mass. Bar No. 698419)
Diana Howat (Mass. Bar No. 711066)
**EDLAW PROJECT – COMMITTEE FOR
PUBLIC COUNSEL SERVICES**

10 Malcolm X Blvd., 2nd floor
Roxbury, MA 02119
Tel.: 617-910-5812
Fax: 617-507-6363
elevitan@publiccounsel.net
dhowat@publiccounsel.net

Verification

I have had the foregoing Verified Amended Complaint read and explained to me in my native language of Spanish. I declare under penalty of perjury that the factual statements set forth in the foregoing Verified Amended Complaint are true and correct based on my knowledge, information and belief.

Signed by:

3B9E1B01E6E04DE...

Parent Doe

7/31/2024

Date

Translator's Statement

I, Karem Lopez, affirm under the penalties of perjury that I read a copy of the foregoing translated into Spanish to Parent Doe, and Parent Doe affirmed under oath that to the best of their knowledge all the facts contained therein are true. I am a certified interpreter.

Signed by:

7F8C29FAA1D7411...

Name

7/31/2024

Date

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2024, a true copy of the foregoing document was served by electronic mail upon counsel for the Defendants.



Julian Washington